

# Eastham Conservation Commission

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## Conservation Commission Meeting Minutes October 25, 2011

Earle Mountain Room  
Eastham Town Hall  
2500 State Highway  
Eastham, MA

**Commissioners Present:** Chairman Stephen Smith, Steven LaBranche, Fred Rollinson, Sandra Larsen, Vivien Cook.

**Not Present:** Commissioner Linda Haspel

**Staff Present:** Conservation Agent Amy Usowski, Shana Brogan Administrative Assistant

**Also Present:** Jason Ellis of JC Ellis Design, Tim Brady of East Cape Engineering, Robert Prescott of Mass Audubon, Fred Ambrose of Ambrose Homes, Stephanie Sequin of Ryder & Wilcox, Christine and Ingrid Seaman, Ron Peterson of Atlantic Well Drilling, Margaret Andrews, and George Swope.

6:01PM

Chairman Smith opened the meeting.

6:02PM

**Request for Determination of Applicability requested by Mary Nardini.** Applicant requests relocation of well at property located at 15 Charlie Noble Way, Map 19, Parcel 1. Ron Peterson of Atlantic Well Drilling said they would use portable equipment and a small excavator. Amy Usowski said she did not have many questions as it is on the edge of vegetation and they are not taking the tree down. Fred Rollinson **MOVED** to approve a negative determination for reason #3, Steven LaBranche **SECONDED**.  
**ALL IN FAVOR.**

6:07PM

**Notice of Intent filed by Eastham Department of Public Works.** Applicant requests reconstruction of Ellis Road to eliminate storm water discharge to Town Cove, Map 22. Applicant wrote to request a continuation. Sandra Larsen **MOVED** to approve a continuance until November 08, 2011, Vivien Cook **SECONDED**.  
**ALL IN FAVOR.**

6:08PM

**Notice of Intent filed by Margaret Andrews.** Applicant requests installation of a septic system to serve an existing-family dwelling, pumping and removal of cesspools, window replacements, construction of farmers porch, and replacement of roof singles on sunroom and underground gas and electrical services at property located at 22 Asparagus Lane, Map 19, Parcel 37.

Stephanie Sequin represented the applicant and said the applicants are living in the residence year round and most of the yard is natural with a Cape Cod lawn. They will be replacing the doors

and windows with some changes in size and they will be constructing a farmer's porch. They will also and install a gas and electric lines as well as updating from cesspools to a septic system which they will be placing as far away from the bank as possible and require variances from the Board of Health. Stephanie Sequin continued to say the area will be re-vegetated. Amy Usowski asked if any trees would have to be removed during the project and Stephanie Sequin replied the one by the septic system would have to be removed. Amy Usowski suggested that two shrubs be planted in place of the trees. Stephen Smith said the dumpster for construction debris should definitely be covered and the patio shall have a pervious base.

Steven LaBranche **MOVED** to approve the project, Fred Rollinson **SECONDED**.

**ALL IN FAVOR.**

6:17PM

**Continuation of hearing for Notice of Intent filed by Richard and Sande Bishop.** Applicant proposes construction and maintenance of a stone revetment on a coastal bank at property located at 45 Longstreet Lane, Map 10, Parcel 341A.

This meeting was closed to public comment on October 11, 2011 and was continued to vote on the Order of Conditions.

Tim Brady represented the applicant and said he received the draft Order of Conditions, there were some changes in regards to the benchmark and the face of the revetment was to be made not entirely rough faced and the stones are spread apart a little further than usual.

Steven LaBranche **MOVED** to approve the project, Fred Rollinson **SECONDED**.

**1 Abstention.**

**MOTION CARRIED.**

6:28PM

**Continuation of hearing for Notice of Intent filed by Joanne V. Scott.** Applicant proposes construction and maintenance of a stone revetment on a coastal bank at property located at 49 Longstreet Lane, Map 10, Parcel 343.

This meeting was closed to public comment on October 11, 2011 and was continued to vote on the Order of Conditions.

Amy Usowski said that there would not be many changes to this Order of Conditions other than their requirement is 70 cubic yards of annual nourishment.

Steven LaBranche **MOVED** to approve the Project, Fred Rollinson **SECONDED**.

**1 Abstention**

**MOTION CARRIED.**

6:30PM

**Continuation of hearing for Notice of Intent filed by Christine Seaman.** Applicant proposes construction and maintenance of a stone revetment on a coastal bank at property located at 43 Longstreet Lane, Map 10, Parcel 338.

This meeting was closed to public comment on October 11, 2011 and was continued to vote on the Order of Conditions.

There were no comments on the Orders of Conditions.

Fred Rollinson **MOVED** to approve the project, Steven LaBranche **SECONDED**.

**1 Abstention.**

**MOTION CARRIED.**

6:35PM

**Continuation of hearing for Notice of intent filed by Jeanne Flaherty.** Applicant proposes moving house onto a micropile foundation, two additions, and deck expansion at property located at 165 Harmes Way, Map 1, Parcel 103.

Jason Ellis represented the applicant and said there was a lot of correspondence in the past two weeks regarding pressure treated wood. Amy Usowski confirmed the commission received information from Ambrose Homes. Sandra Larsen said she thought it would be a great project with the right conditions and will be a benefit to the resource. Fred Rollinson said he thought he applicants did a great job providing information and thinks Tewhey Associates of Maine who provided a report on the pressure treated wood gave a lot of credible information. Sandra Larsen said the issue is with the policy and the town by-law and what they got from the building inspector

is that MCA is accepted by DEP so it meets code. Sandra Larsen then read part of the code book and summarized that native lumber use meets all code requirements.

Stephen Smith said he sees no reason you would have to build from pressure treated wood and considering it is not in contact with the ground, there are no termites, there is little fungus, and they are asking to introduce copper into a marine environment. He continued to say that considering all of the structure is in the air, and the salt content he still questions as to why it can't be done in native stock. Fred Ambrose refuted Stephen Smith's statement that one cannot use steel nails. Stephen Smith continued to say that although he appreciated the information to the commission there was no alternatives analysis for the use of pressure treated lumber and it was not demonstrated that it could not be done. Sandra Larsen said the reason they made the policy is because there is a continued investigation into MCA. Steven LaBranche said the policy says no pressure treated lumber.

Before public comment had been addressed, Fred Ambrose spoke from the audience. He said he has been in business for 35 years and they spent 80 hours to provide the commission the information on the product he proposes to use. After a personal offence to Chairman Smith, Fred Ambrose was requested to leave the meeting room by Chairman Smith and Mr. Flaherty.

Jason Ellis clarified that the biggest issue they have is by not allowing them to use the product they are in a compromising position from a liability standpoint and from an economic standpoint and this is the first time the commission has required someone to frame a structure with untreated wood and if it is cut off site the leaching is going to be minimal.

Stephen Smith agreed but said that on a cumulative level it is not. Mr. Flaherty apologized to the commission and said that they are trying to be reasonable and they hired a scientist to tell them about the pressure treated wood and he said it would not affect the resource and it doesn't make sense to debate with the commission about using non treated wood because it is not economical. Mrs. Flaherty said she was confused by the policy because she thought they had the burden to prove it was necessary to use it, not that they would not use it at all. Amy Usowski clarified that according to the town Bylaw they have to prove by a preponderance of evidence that there is no feasible alternative, and that the term feasible has a different meaning to everyone. Mr. Flaherty said this was a deal breaker for them and it doesn't make sense to use untreated wood. Fred Rollinson said the applicant hired an expert with good credentials, and there are a lot of unknowns here. Amy Usowski said there was a link on the MicroPro website that said the product was corrosive to metals. Stephen Smith said he did not see an analysis as to why they could not use natural lumber. Fred Rollinson said he wanted there to be a way to resolve the issue. Stephen Smith clarified with the applicants that they have not received an alternatives analysis for the MicroPro which would say why they couldn't use natural lumber. Fred Rollinson asked if the rest of the commission is not, accepting what the scientist the applicants hired as proof. Stephen Smith said they are looking that there is not an impact and bringing copper into a marine environment is. Amy Usowski said that according to the Wetlands Protection Act, the applicant's product is acceptable, so they should have two votes one under the act and one under the town by law. Mr. Flaherty said it does not make any sense to use the untreated decking because it won't last and it is much more expensive and it does no good if they cannot get a contractor to build the structure in natural wood. The applicants considered asking for a two week continuance.

Jason Ellis said this is far beyond the realm of anyone at the meeting and the applicants have hired a credible source and that is all the information they need. He continued to say they are in compliance with the Wetlands Protection Act and he was not sure the commission's policy on pressure treated lumber was legal. He wondered if it has been taken to town council and there should only be one vote for the project for both the Act and the Bylaw.

Robert Prescott of Mass Audubon asked about the Area of Critical Environmental Concern as well as the scouring that would occur with the dune once the house is lifted. Stephen Smith said the applicants were to have a half sand fence to catch the sand which would be around the legs and adjusted over time. Amy Usowski said the ACEC is at the driveway and it is up to the commission if they will allow machinery there.

**1 Abstention, Vivien Cook.**  
**MOTION DENIED.**

8:20PM

**Certificate of Compliance requested by Jeannine Furrer DEP SE 19-1353** for building of retaining walls, bluestone walkways, plantings and deck reconfiguration at property located at 245 Mary Chase Road, Map 18, Parcel 81A.

Stephen Smith noted the project went through four hearings. Sandra Larsen said the project came out well.

Steven LaBranche **MOVED** to approve a certificate of compliance, Fred Rollinson **SECONDED.**  
**ALL IN FAVOR.**

8:25PM

**Minutes Approval**

Work Session, February 22, 2011

Sandra Larsen questioned the benchmark and the approval was put off until the next meeting.

October 11, 2011 Minutes

Vivien Cook **MOVED** to approve the minutes, Fred Rollinson **SECONDED.**  
**ALL IN FAVOR.**

On-Site Meeting Minutes

15 Horton Way

Vivien Cook asked to add to the minutes why they rescinded the fines.

Fred Rollinson **MOVED** to approve the minutes, Vivien Cook **SECONDED.**  
**ALL IN FAVOR.**

Steven LaBranche **MOVED** to adjourn at 8:37PM, Fred Rollinson **SECONDED**  
**ALL IN FAVOR.**

Respectfully Submitted,



Shana Brogan

